

Notice of Allowability

Application No.

10/649,825

Examiner

Kelly Mahafkey

Applicant(s)

MAEGLI ET AL.

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Arguments filed August 8, 2006.
2. ☒ The allowed claim(s) is/are 1,4,6-11 and 17.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

REASONS FOR ALLOWANCE

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Paul Lewis on October 25, 2006.

The application has been amended as follows:

- Please amend page 1 of the specification, above *Field of the Invention*, to read as follows:

This application claims benefit of provisional application 60/443,183 filed January 29, 2003 and of provisional application 60/422,110 filed October 30, 2002.

- Please replace the current abstract with the one attached herein.

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- Please amend the claims 1, 10, 11, and 17 to read as follows:

Claim 1. A savory, shelf-stable, particulate, meltable, food-grade plasticized composition, said composition having a water activity A_w of less than 0.50 and comprising an oil-in-water emulsion of:

10-30% weight-% of a protein that forms a thermally reversible meltable gel;

15-50 weight-% of plasticizer components to solubilize the protein, comprising 10-40 weight-% of a polyol plasticizer by weight of the plasticized composition and 3-15 weight-% of a non-polyol plasticizer by weight of the plasticized composition;

10-40 weight-% of an edible oil [~~to provide proper texture, mouthfeel, and melt characteristics to the plasticized composition~~];

5-25 weight-% moisture; and

10-40 weight-% of a savory flavoring component

Claim 10. The savory, shelf-stable composition of claim [4] 17, wherein the protein is casein, the polyol plasticizer is glycerin, the non-polyol plasticizer is comprised of monosaccharides originating from the vegetable component, the oil component is partially hydrogenated vegetable oil, and the flavoring component [~~is a~~] includes vegetable flavor.

Claim 11. The savory, shelf-stable composition of claim 10, comprising about 20 weight-% casein, about 17 weight-% glycerin, about 35 weight-% [~~flavor characterizing~~] vegetable component, about 20 weight-% partially hydrogenated vegetable oil, and about 8 weight-% salt and seasoning component.

Claim 17. The savory, shelf-stable composition of claim 1, wherein the flavoring component is a vegetable component.

Reasons for Allowance

The following is an examiner's statement of reasons for allowance:

Applicant's arguments filed August 18, 2006, concerning the Gamay et al. reference (US 5935634), have been fully considered and are persuasive. The 103(a) rejections of claims 1, 4, 6, and 8-11 over Gamay have been withdrawn. The 103(a) rejections of claim 7 over Gamay in view of Rule has been withdrawn.

The closest art, to the claimed invention is Gamay et al. (US 5,935,634) and Zimeri et al. (US 6863911 B2).

The Gamay reference discloses of a composition similar to the one as claimed by applicant, however, the reference does not teach of a water activity level for the composition below 0.86. Gamay discloses of a shelf stable cheese which comprises 22.10% casein (protein that forms a thermally reversible meltable gel), 2-15% of glycerin (polyol plasticizer), 2-15% lactates (non-polyol plasticizer), including sodium lactate, 22.78% partially hydrogenated vegetable oil, and flavoring in a type and a level to suit the desired taste. Gamay teaches that there is a need for cheese products/compositions to include a low-water activity in order to satisfy safety measures in regards to shelf stability and discloses a water activity as low as 0.86. There is no direct teaching or suggestion for one of ordinary skill in the art to select the a water activity of less than 0.50 in the composition as taught by Gamay.

Zimeri teaches of a shelf stable composition with a water activity of less than 0.50 and a composition similar to applicant's, however Zimeri specifically teaches away from the use of a

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protein in the composition, which forms a thermally reversible meltable gel. The shelf stable, oil-in-water composition as taught by Zimeri comprises 0.5-15% protein that does not result in gelling, at least 9% of a polyol plasticizer, a non-polyol plasticizer, including maltose, at least 30% fat, up to about 2-10% moisture, and at least 15% flavor. There is no direct teaching or suggestion in for one of ordinary skill in the art to select a protein in the composition, which forms a thermally reversible meltable gel in the composition as taught by Zimeri.

Thus, although it was known to have a shelf stable composition with a thermally reversible meltable gel in the composition (as taught by Gamay) and it was known to have a shelf stable composition with a water activity of below 0.50, the combination of the two components was not known in the art at the time the invention was made.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

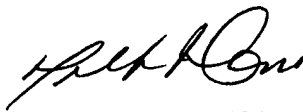
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Mahafkey whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Kelly Mahafkey
Examiner
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